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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,382	10/20/2001	Louis I. Memran	765	2795
27353	7590	08/23/2006	EXAMINER	
MELVIN K. SILVERMAN 500 WEST CYPRESS CREEK ROAD SUITE 500 FT. LAUDERDALE, FL 33309			MEI, XU	
			ART UNIT	PAPER NUMBER
			2615	

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/002,382	Applicant(s) MEMRAN, LOUIS I.	
	Examiner Xu Mei	Art Unit 2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. This communication is responsive to the applicant's argument dated 05/18/2006.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by LaMarra.

Regarding claims 1, 3, 5 and 8, LaMarra discloses an audio tube card circuitry (see Fig. 4) comprising: at least one vacuum tube (56 or 57) having an input and an output; a dc to dc voltage converter supplying high voltage to the vacuum tube (Fig. 8, high voltage output from power supply 140, and col. 6, lines 49-58); and analog output signal from a sound card or an analog input of the sound card (i.e., analog signals from MIDI

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processor) being input into the at least one vacuum tube, and output of the at least one vacuum tube being connected to an external device (col. 2, lines 58-61). The MIDI processor 150 receives MIDI input signals on the MIDI input jack 84 as shown in Fig. 8 are signals being inherently processed by a computer sound card or sound chip or as claimed. And this would have met the intended to use of this audio tube with computer audio circuitry as claimed.

Regarding claims 2, 4, 7 and 10, see col. 4, lines 38-52 and the power supply for the heater are supplied from a common power supply using suitable voltage regulator (i.e., computer power supply when the tube card is in used with the computer).

Regarding claims 6 and 9, the sound chip or MIDI processor for the computer typically had a digital input/output connected to the motherboard of the computer when the tube card is being in used with the computer.

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Response to Arguments

The argument, Declaration and Affidavit filed 05/18/2006 is considered, but is deemed not sufficient as discussed below under **MPEP 715.07 [R-3] Facts and Documentary Evidence:**

The MPEP stated that:

The essential thing to be shown under 37 CFR 1.131 is priority of invention and this may be done by any satisfactory evidence of the fact. FACTS, not conclusions, must be alleged. Evidence in the form of exhibits may accompany the affidavit or declaration.

Each exhibit relied upon should be specifically referred to in the affidavit or declaration, in terms of what it is relied upon to show. For example, the allegations of fact might be supported by submitting as evidence one or more of the following:

- (A) attached sketches;
- (B) attached blueprints;
- (C) attached photographs;
- (D) attached reproductions of notebook entries;
- (E) an accompanying model;
- (F) attached supporting statements by witnesses, where verbal disclosures are the evidence relied upon. Ex parte Ovshinsky, 10 USPQ2d 1075 (Bd. Pat. App. & Inter. 1989);

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(G) testimony given in an interference. Where interference testimony is used, the applicant must point out which parts of the testimony are being relied on; examiners cannot be expected to search the entire interference record for the evidence. Ex parte Homan, 1905 C.D. 288 (Comm'r Pat. 1905);

(H) Disclosure documents (MPEP § 1706) may be used as documentary evidence of conception.

Exhibits and models must comply with the requirements of 37 CFR 1.91 to be entered into an application file. See also MPEP § 715.07(d).

A general allegation that the invention was completed prior to the date of the reference is not sufficient. Ex parte Saunders, 1883 C.D. 23, 23 O.G. 1224 (Comm'r Pat. 1883). Similarly, ***a declaration by the inventor to the effect that his or her invention was conceived or reduced to practice prior to the reference date, without a statement of facts demonstrating the correctness of this conclusion, is insufficient to satisfy 37 CFR 1.131. 37 CFR 1.131(b) requires that original exhibits of drawings or records, or photocopies thereof, accompany and form part of the affidavit or declaration or their absence satisfactorily explained.*** In Ex parte Donovan, 1890 C.D. 109, 52 O.G. 309 (Comm'rPat. 1890) the court stated

If the applicant made sketches he should so state, and produce and describe them; if the sketches were made and lost, and their contents remembered, they should be reproduced and

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furnished in place of the originals. The same course should be pursued if the disclosure was by means of models. If neither sketches nor models are relied upon, but it is claimed that verbal disclosures, sufficiently clear to indicate definite conception of the invention, were made the witness should state as nearly as possible the language used in imparting knowledge of the invention to others.

However, when reviewing a 37 CFR 1.131 affidavit or declaration, the examiner must consider all of the evidence presented in its entirety, including the affidavits or declarations and all accompanying exhibits, records and "notes." An accompanying exhibit need not support all claimed limitations, provided that any missing limitation is supported by the declaration itself. *Ex parte Ovshinsky*, 10 USPQ2d 1075 (Bd. Pat. App. & Inter. 1989).

The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b). In *re Borkowski*, 505 F.2d 713, 184 USPQ 29 (CCPA 1974). Applicant must give a clear explanation of the exhibits pointing

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out exactly what facts are established and relied on by applicant. 505 F.2d at 718-19, 184 USPQ at 33. See also In re Harry, 333 F.2d 920, 142 USPQ 164 (CCPA 1964) (Affidavit "asserts that facts exist but does not tell what they are or when they occurred.").

And it is clear that applicant did not provide sufficient evidence such as the required original exhibits of drawings or records, or photocopies thereof, accompany and form part of the affidavit or declaration or their absence satisfactorily explained to satisfy 37 CFR 1.131 as indicated above.

In conclusion, the argument, Declaration and Affidavit filed 05/18/2006 is deemed not sufficient to satisfy 37 CFR 1.131, and the existing rejection is deemed appropriate.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Xu Mei whose telephone number is 571-272-7523. The examiner can normally be reached on Monday-Friday (9:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Xu Mei
Primary Examiner
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08/18/2006